

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MASSACHUSETTS

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 v.

6 DAVID SIDOO, GREGORY COLBURN,

AMY COLBURN, GAMAL ABDELAZIZ,

7 DIANE BLAKE, TODD BLAKE,

I-HSIN CHEN, MOSSIMO GIANNULLI,

8 ELIZABETH HENRIQUEZ,

MANUEL HENRIQUEZ, DOUGLAS HODGE,

9 MICHELLE JANAUS, ELISABETH

KIMMEL, LORI LOUGHLIN, WILLIAM

10 MCGLASHAN, JR., MARCI PALATELLA,

JOHN WILSON, HOMAYOUN ZADEH,

11 ROBERT ZANGRILLO,

12 Defendants.

13
14 BEFORE THE HONORABLE M. PAGE KELLEY
15 UNITED STATES MAGISTRATE JUDGE

16 INTERIM STATUS CONFERENCE

17
18 October 2, 2019

19 John J. Moakley United States Courthouse
20 Courtroom No. 24
One Courthouse Way
21 Boston, Massachusetts 02210

22 Linda Walsh, RPR, CRR
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produced by computer-aided stenography

P R O C E E D I N G S

(Recording begins at 2:19:33)

THE CLERK: Today is October 2, 2019, and we are on the record in Criminal Case Number 19-10080, the *United States versus David Sidoo, et al.*, the Honorable M. Page Kelley presiding.

Will counsel for the Government please identify themselves for the record.

MR. ROSEN: Good afternoon, Your Honor. Eric Rosen and Kristen Kearney for the Government.

THE COURT: Good afternoon.

So because there's so many defense lawyers, I've asked that everyone sign in on this sheet. So if you did not sign in on this sheet, would you please do so before you leave.

Also, because we don't have a stenographer, and this is just being recorded, if you speak, it would be great if you would identify yourself as you speak so the recording will reflect who was talking.

So I got the parties -- I've reviewed the joint interim status report, Number 574 on the docket, and I would like to set the interim status conference in this matter for January 17 at 11:00 a.m. And does anyone want to say anything about that? No? Well, that's remarkable. That's great, everyone.

And then I have a couple of announcements. After

1 speaking with Judge Gorton, two things: Judge Gorton has a
2 strong preference that the case be tried in 2020. So just to
3 give you some idea of the schedule that he has in mind, he
4 would like the trial or trials to be in the coming year.

5 And, secondly, like Judge Talwani, he is amenable to
6 the defendants filing a dispositive motion on the scope of the
7 conspiracy prior to the filing of other dispositive motions,
8 and what I think we'll do is give defendants time to digest the
9 discovery sufficiently so that you feel that you can file such
10 a motion, but then we'll go ahead and file the motions, get
11 them up to him, and he will rule on those before the case goes
12 up for trial.

13 So -- and another thing you should just be thinking
14 about, which this may be somewhat premature, is for those who
15 are going to trial, whether such a motion is allowed or not,
16 there will probably not be only one trial. So you might just
17 want to be thinking in your planning for the case about the
18 grouping of the defendants for trial.

19 Okay. So with that having been said, I think I'll
20 hear from the Government concerning the status of the
21 production of discovery.

22 MR. ROSEN: Judge, I think we've made a lot of
23 progress in terms of producing discovery. The last production
24 was at the end of August. We're continuing to make
25 productions. We're at a very sort of limited -- the amounts

1 have been getting, you know, much smaller since the initial
2 tranche. You know, we do anticipate producing limited amounts
3 more. We did a series of search warrants back in July. We're
4 currently processing this evidence and working with the
5 defendants on privilege and things like that, and we anticipate
6 having it done in the next two months. I do note that, though,
7 you know, given that it was defendants' own e-mail accounts for
8 the parents, that they do have access to what we have seized.
9 So there shouldn't be any surprises for them, at least within
10 that discovery.

11 We've produced about two million documents, I think
12 just under two million documents thus far, and we've had
13 continued discussions with multiple defense counsel. I know I
14 received a general discovery letter from the defendants
15 next -- last -- earlier this week, or I think at the end of
16 last week. And, you know, we'll respond sort of in due course.

17 I did meet with counsel for Mr. McGlashan just before
18 this meeting. We did have, I think, a very productive meeting,
19 and I do think it's helpful when, you know, going through these
20 discovery exercises that counsel at least set up a time so we
21 can meet together and discuss, meet and confer in person, as
22 it, I think, can alleviate a lot of issues in the sort of
23 back-and-forth communication amongst the parties.

24 Pursuant to our meeting, I said we would respond to
25 the various things we agreed upon, and we will do that in due

1 course, hopefully fairly soon.

2 So that's about it from my perspective. I don't know
3 if the Court has any additional questions on that?

4 THE COURT: So with regard to the e-mail accounts that
5 were seized, do the defendants -- the affected defendants know
6 precisely what was seized?

7 MR. ROSEN: Well, they should know that their e-mail
8 address -- that their e-mail address was seized by the
9 Government because we've produced the affidavit and everything
10 in discovery.

11 THE COURT: Okay.

12 MR. ROSEN: They actually get notice from the service
13 provider where there's no nondisclosure order, and we have
14 since been reached out to every defendant who this has
15 affected, and we have gotten from them a list of potential
16 privileged e-mail addresses, and we sort of wiped all those
17 away from any type of review or anything like that to avoid any
18 type of privileged review, and then we're -- we have
19 contractors that are beginning to sort through the
20 nonprivileged e-mails to comply with Attachment B, which is
21 what we're trying to do now, just to make sure we only turn
22 over and retain stuff related to the criminal activity.

23 THE COURT: Okay. So thank you. And anything from
24 defense counsel concerning the issue of discovery? Yes?

25 MR. WEINBERG: No criticisms of discovery, but just an

1 alert, if I can, you know, that we would request that all of
2 the deadlines that the Government has proposed be deferred for
3 discussion on January 17. I think I speak for defense counsel
4 to say that although we appreciate Judge Gorton's, you know,
5 receiving, you know, some takeout motions or motions that
6 comprehensively challenge the cornerstones of the Government's
7 theory of prosecution and whether or not facially they charge
8 properly the different criminal statutes that they've alleged,
9 we'd like Your Honor to set a date on January 17 for the filing
10 of that motion as well as the filing of discovery motions.

11 I have told Mr. Rosen we'll try to get letters to the
12 Government about open discovery issues before the January 17
13 status conference so that we can at least identify for the
14 court on that date, you know, what issues remain between the
15 defense, you know, counsel and the Government.

16 But the search warrants are quite important because
17 they were our clients' own statements by e-mail, and I'd like
18 to, you know, work with the Government. Perhaps if they would
19 give us their search terms, then we can do the same search
20 terms on our clients' e-mails because otherwise we're dealing
21 with just dozens of thousands of e-mails, and to review our
22 clients' e-mails if the Government is only going to search and
23 download a subset, along with all of the other
24 responsibilities, with over 2,000 audios and that three million
25 pages of discovery, make it hard even by January 17th for us to

1 finish the first-level job of reviewing the whole universe of
2 materials that the Government has provided us in their rolling
3 discovery.

4 THE COURT: Okay. So stop right there. You can still
5 talk but -- so does anyone have a problem, any of the
6 defendants, with filing the motion concerning the conspiracy by
7 January 17th or does anyone feel that that's too far in the
8 future?

9 DEFENSE COUNSEL: Your Honor, I think I may be wrong,
10 but I thought he suggested not setting a date for the motion to
11 be filed January 17th.

12 MR. WEINBERG: That's right. What I would ask Your
13 Honor --

14 THE COURT: Oh, until the 17th. I see.

15 MR. WEINBERG: Give us to the 17th to continue --
16 we've only had literally four and a half months to go through
17 three million pages of materials and thousands of audios. Give
18 us to January 17th so that when we make our challenges that
19 Judge Gorton is inviting, you know, we'll make them shortly
20 after the 17th. Your Honor will set a date for the pleadings
21 that will not jeopardize the desire to have the trials, in the
22 plural, occur in the last part of 2020.

23 THE COURT: So I'm kind of fascinated that, you know,
24 we had another group in yesterday who want to file that motion
25 this month because they're -- I think what counsel stated, it's

1 not dependent on discovery. So -- which seemed like a curious
2 thing to me, but okay. But you say it is dependent on the
3 discovery, so you would like to review the millions of pages of
4 discovery in the next three months and then set a date for
5 filing the motion concerning the conspiracy?

6 MR. WEINBERG: And here's why, Judge. You know,
7 there's two levels of challenge to the Government's theory of
8 prosecution. You know, one is strictly facial, and we all know
9 that with the Government not stipulating to facts, the courts
10 are disinclined to dismiss indictments if there's any
11 hypothetical factual scenario that would legitimize the
12 Government's pleading. They take the pleading at face value,
13 and if the Government says fraud or bribery or property crime
14 or obtaining money, it ordinarily survives the facial
15 challenge, and they've charged a single conspiracy, or at least
16 they've attempted to.

17 What we're trying to do, or at least I'm trying to do,
18 is represent in a pleading that goes one level below the facial
19 allegations that there's simply no evidence that, for instance,
20 my client knows this gentlemen's client or any of our clients
21 know each other. It is the absolute classic, going back to the
22 old drug cases, you know, I started with in the 1970s, you have
23 a hub, Mr. Singer; you have spokes, the parents; and you have
24 an absolute absence of evidence of a rim, a rim being defined
25 as interdependence. But I can't -- I can make that argument

1 better if I could represent that I have examined the evidence
2 and the interdependence of Mr. Zangrillo and any of the other
3 co-counsel's clients doesn't exist, and if they can do the same
4 with me, hopefully the Government will at least agree to that
5 level of fact. And they will argue, well, we have Singer and
6 Singer's team, and that's enough to make everybody a single
7 conspiracy, and then we can present to Judge Gorton a motion
8 that can't be simply adjudged on the face of it, which has
9 problems, but we can really address to Judge Gorton in this
10 first pleading a pleading that will raise the issues that are
11 of pivotal significance to all of us as we go forward.

12 THE COURT: Okay. So I don't know what your view is,
13 Mr. Rosen?

14 MR. ROSEN: My view is that there's, you know, there's
15 no summary judgment motions in criminal practice. It would
16 just simply be a jury issue. So I don't think it's relevant
17 to -- I don't think it's relevant to look beneath the facts,
18 especially when they're skewed in a particular direction. I'm
19 not going to address that now, Judge, but I'm happy with the
20 January date or whatever. We don't need that, that's fine.
21 Whether the motion improperly incorporates facts that
22 cherry-pick from discovery, that's another issue that Judge
23 Gorton will deal with.

24 THE COURT: Okay. So I will not set a date for the
25 filing of that particular motion until January 17th. But it

1 would be very helpful if on the 17th counsel have some idea of
2 by what date they want to file the motion, and if you could
3 work on a date together. And if you have an outlier, you
4 could -- and you're filing a separate motion, you could just
5 propose your separate dates.

6 I do think it's in your interest to consolidate as
7 much as possible, although I know it may not be possible for
8 everyone. And also on the 17th, absent some really good
9 reasons, I think those dates will be set in fairly short order.
10 I wouldn't expect more than 45 to 60 days to file those motions
11 by then, although I'll hear you on that.

12 So, okay, so what about -- I guess the Government was
13 asking for a briefing schedule for discovery motions, and I
14 think I won't do that at this time, but I would really urge
15 counsel, as you are going through the discovery, to send
16 letters to the Government periodically and not hold off until
17 you have all your discovery requests at once, because I do
18 think on the 17th we will also shorten up those dates, and
19 you'll need to have reviewed the discovery. I know it's very
20 voluminous, but if you're going to go to trial soon after that,
21 you're going to need to have reviewed it. So you need to have
22 reviewed the discovery and know what it is that you want from
23 the Government, and we'll set dates at that time, too, to try
24 to get you to a motions date, if you need one.

25 So I'm not going -- I'm not going to enforce a strict

1 deadline for the letters, but let's get them rolling so the
2 Government isn't deluged with them at the end. And I don't
3 want to see that as a tactic either. So when things occur to
4 you, send them a letter.

5 Yes, sir?

6 MR. HUESTON: John Hueston on behalf of William
7 McGlashan. So the letters have been coming. There's been one
8 that's been sent collectively and then there has been some
9 individual letters and there has been some meet and conferring
10 happening along those lines.

11 I guess what I want to prepare Your Honor for is I
12 think the Government has been working, from my perspective, in
13 good faith to try to resolve issues, but as of today, a *Brady*
14 review is not complete, they've acknowledged. It's not just a
15 matter of getting out a couple of final productions, and
16 there's going to be additional meet and confers necessary. And
17 then we're going to be relying on them producing the remainder
18 of discovery far enough in advance of that January 17th hearing
19 so that everything is teed up and we can then have a better
20 sense of how we can actually schedule any necessary discovery
21 motions.

22 So my point being, maybe an urging of the Government
23 to complete its process both in meeting with us, and we have
24 not let grass grow under our feet. There's no tactic here.
25 There are millions of pages of documents. People are working

1 through them, and we are already engaging, but we have to rely
2 also in part on the Government completing its process and doing
3 so soon.

4 THE COURT: Okay. Thank you.

5 So I do think the Government has -- I mean, Mr. Rosen
6 has said they want to meet and confer in person as often as
7 possible, and counsel should make themselves available for that
8 without just sending e-mails back and forth. I think that's a
9 better way to conduct it. So let's just have a good-faith
10 effort on everyone's part to be responsive and try to get
11 things done.

12 So, okay. And if you find between now and January
13 you're really having problems, then I want you to meet and
14 confer in person with the Government, and then I'm happy to
15 hear matters before January 17th if we need to do that, too.

16 So what else? Anything else about discovery? I
17 really hope you're working together and not just everyone
18 duplicating all efforts with this much discovery, so. Okay.

19 So no one is going to offer any defense of insanity,
20 public authority or alibi. And with regard to expert
21 witnesses, 90 days and 30 days, and obviously if a party
22 intends on calling an expert, I think you should let the other
23 side know before these deadlines. This is for the disclosures
24 for the reports, et cetera, but I don't want experts dropping
25 on either side on these deadlines. Like you're going to know

1 before the deadline that you've hired someone. So just -- this
2 is the deadline for the disclosures, but if you're going to
3 hire an expert, you should let the other side know what you're
4 planning to do so they know to get ready. And I think at the
5 hearing yesterday, the Government was saying they didn't really
6 anticipate calling any experts, so.

7 MR. ROSEN: At this stage I don't really see an
8 expert, but obviously things can change. But as soon as we
9 make a determination, I'll let them know.

10 THE COURT: So, for example, if the Government decides
11 they're going to call an expert for some reason, then they're
12 going to let the defense know, even if it's more than 90 days
13 before trial. So, okay. So what else?

14 MR. WEINBERG: I'm not making a formal motion, but it
15 would help the defense in terms of their planning and in terms
16 of whether they need to have an expert to know at some early
17 date whether the Government intends to call Mr. Singer as a
18 witness because his testimony is, you know, although as a fact
19 witness, he will, you know, integrate expertise in the college
20 admissions process predictably as a witness. And, you know,
21 whether or not we need to call what experts and what kind of
22 experts we need to call may very well be correlated to whether
23 it's the Government's intention to call Mr. Singer or not.

24 MR. ROSEN: Well, Judge, I mean, clearly he wants to
25 know if we call a witness. It has nothing to do with an

1 expert, expertise or anything. As Mr. Weinberg acknowledged,
2 he's a fact witness. Everything depends on how this case
3 proceeds in terms of the evidence allowed in, in terms of which
4 defendants go, so we'll make a determination as we get closer
5 to trial as to whether we actually need him as a witness or
6 what he can offer. So just like with any other witness, we'll
7 provide that to the defense as set forth in the local rules.

8 THE COURT: Okay. And I think -- at this time I don't
9 think there's any reason to deal with this, but if we're
10 getting -- I mean, I'm assuming if the case is going to be
11 tried sometime in 2020, you're probably going to be here in
12 this session after you get a trial date to still be ironing out
13 the discovery motions. So as the trial date approaches, we can
14 deal with the issues about early disclosure and whether we want
15 to follow the rules on all the dates. If it's going to be a
16 big trial with a lot of defendants, you know, we'll deal with
17 that as the time approaches.

18 MR. KELLY: Your Honor, Brian Kelly on behalf of
19 Mr. Abdelaziz. I echo Mr. Weinberg's request. It's not a
20 formal motion, but the AUSA has been representing to people
21 that he is not calling Mr. Singer, and that's important because
22 it could reduce a lot of our review from all these papers. A
23 lot of this discovery is Singer specifically, and if we're
24 spending all our time trying to figure out how to cross-examine
25 him and they're not even calling him, that could expedite

1 matters. And if they make that decision and they're telling
2 people they're not going to call him, we should know, and we
3 can get this process moving.

4 MR. ROSEN: I've never made that representation. I've
5 told people that, you know, we're still evaluating which
6 witnesses to call, and he may or may not be a witness, which is
7 what I've told everyone. I mean, that's what every witness is.
8 It depends on who goes to trial, what the evidence is and what
9 we need, and that's made as we narrow down the issues for
10 trial.

11 THE COURT: Okay. So I'm not -- I'm not expecting
12 Mr. Rosen to have decided at this moment whether he's calling
13 Mr. Singer as a witness or not. So I guess everyone knows now
14 they're undecided, and so as the time ticks down, you know,
15 once you get a trial date and once things are closer to the
16 trial date, then we'll figure out what to do about that. Okay.
17 I'm sure you will figure out what to do about that, too. All
18 right. So anything else?

19 (No response.)

20 THE COURT: Okay. So I'm going to exclude the time
21 under the Speedy Trial Act from today to the next date. And in
22 the meantime, if you need help in any regard with the case,
23 confer, and then I'm happy to deal with it before January 17th.
24 So if things are popping up and you need the Court's
25 assistance, I'm happy to help you. Okay. All right. Thank

1 you very much.

2 MR. ROSEN: Thank you.

3 MR. WEINBERG: Thank you, Your Honor.

4 THE CLERK: Court's in recess.

5 (Recording ends at 2:42:51)

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1 CERTIFICATE OF OFFICIAL REPORTER

2

3 I, Linda Walsh, Registered Professional Reporter

4 and Certified Realtime Reporter, in and for the United States

5 District Court for the District of Massachusetts, do hereby

6 certify that the foregoing transcript is a true and correct

7 transcript of the stenographically reported proceedings held in

8 the above-entitled matter to the best of my skill and ability.

9 Dated this 6th day of October, 2019.

10

11

12 /s/ Linda Walsh

13 Linda Walsh, RPR, CRR

14 Official Court Reporter

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